

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
Civil Action No. 3:21cv124**

**AMERICAN INTERSTATE INSURANCE  
COMPANY,**

**Plaintiff,**

**v.**

**DDG CONSTRUCTION SERVICES, INC.,**

**Defendant.**

**COMPLAINT**

Plaintiff American Interstate Insurance Company (“AIIC”) alleges as follows:

**INTRODUCTION**

AIIC provided Workers Compensation Insurance to Defendant DDG Construction Services, Inc. (“DDG”) pursuant to a written contract of insurance for the time-period beginning on March 7, 2019 and ending on September 24, 2019. Although AIIC performed all its obligations under the insurance contract, DDG has failed and refused to pay \$95,348.99 in premiums owed to AIIC under the terms of the insurance contract.

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff American Interstate Insurance Company is a Nebraska corporation with its principal place of business in DeRidder, Louisiana.
2. Defendant DDG Construction Services, Inc. is a South Carolina corporation with its principal place of business in Charlotte, North Carolina.

3. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. § 1332 due to the complete diversity of citizenship of the parties and because the amount in controversy exceeds \$75,000.00.

4. Venue is proper in the Western District of North Carolina, Charlotte Division, because Defendant's principal place of business is located in this judicial district and because a substantial part of the events giving rise to this claim occurred in this judicial district.

### **FACTUAL ALLEGATIONS**

5. AIIC operates in 27 states, including North Carolina, and provides specialty workers' compensation insurance to small and mid-sized employers engaged in high hazard industries like construction and trucking.

6. DDG reported to AIIC that it engaged in the construction business providing framing carpentry, construction and remodeling primarily for commercial customers.

7. On March 5, 2019, DDG, through its agent, submitted a Workers Compensation Application to AIIC to provide workers compensation insurance for its business.

8. On March 7, 2019, AIIC issued a policy of workers compensation insurance (Policy No. AVWCNC2778832019) to DDG (the "Policy"). A true and correct copy of the Policy is attached as **Exhibit A** hereto and incorporated herein by reference.

9. Pursuant to the terms of the Policy, AIIC estimated the premium based on the information provided by DDG regarding its estimated payroll for the term of the Policy. This resulted in a total estimated premium of \$113,659.00 (the "Estimated Premium").

10. Pursuant to the terms of the Policy, an actual final premium amount would be calculated after the end of the Policy based upon, among other things, DDG's actual payroll during the term of the Policy.

11. DDG elected to pay the Estimated Premium owed under the Policy to AIIC by making a down payment and then agreeing to pay nine (9) monthly installments in the amount of \$9,544.67 each.

12. DDG defaulted on its monthly payment obligations by failing to pay the monthly installment due on August 10, 2019. Based on DDG's default, AIIC sent a Notice of Cancellation to DDG on August 23, 2019, advising that the policy would be cancelled effective September 24, 2019 due to non-payment of premium (the "Notice of Cancellation"). A true and correct copy of the Notice of Cancellation is attached as **Exhibit B** hereto and incorporated herein by reference.

13. DDG never paid the August installment. DDG thereafter also failed to pay the monthly installment due on September 10, 2019.

14. The Notice of Cancellation also advised DDG that AIIC would be conducting a final audit to determine the actual premium owed by DDG for the time that the Policy was in effect.

15. In accordance with the terms of the Policy, AIIC conducted a final cancellation audit on or about February 11, 2020 to determine the actual premiums owed by DDG under the Policy.

16. As a result of the audit, AIIC determined that DDG owed additional premium in the amount of \$76,259.65 to AIIC based on actual payroll during the time the Policy was in effect.

17. By correspondence dated February 28, 2020, AIIC provided DDG with a copy of the final audit, notified DDG that additional premium in the amount of \$76,259.65 was due, and requested payment in the full amount owed (the unpaid Estimated Premium installments plus the final audited premium) in the amount of \$95,348.99. A true and correct copy of AIIC's February 28, 2020 correspondence to DDG is attached as **Exhibit C** hereto and incorporated herein by reference.

18. DDG did not dispute the additional premium owed based on the final audit or the total amount owed to AIIC. DDG never responded to AIIC's correspondence and demand for payment.

19. Despite numerous demands for payment, DDG has failed and refused to pay the premiums owed to AIIC, thereby breaching its obligations to AIIC under the Policy.

20. On July 15, 2020, AIIC sent a "FINAL NOTICE" to DDG advising DDG that if the past due amount of \$95,348.99 was not paid within ten (10) days, AIIC would take legal action to collect the debt. A true and correct copy of the AIIC's July 15, 2020 correspondence is attached as **Exhibit D** hereto and incorporated herein by reference.

21. DDG did not pay the past due balance owed or respond in any manner to AIIC's July 15, 2020 correspondence.

22. As of the date of this Complaint, DDG owes AIIC the principal amount of \$95,348.99.

23. Interest continues to accrue from July 25, 2020, the due date outlined AIIC's July 15, 2020 correspondence, at the legal rate of 8%.

### **CLAIMS FOR RELIEF**

#### **COUNT I – BREACH OF CONTRACT**

24. The allegations of the preceding paragraphs of this Complaint are incorporated by reference and realleged as if fully set forth herein.

25. AIIC and DDG entered into a valid, binding and enforceable contract of insurance.

26. DDG materially breached the contract of insurance by failing to pay AIIC all premiums due under the Policy.

27. As a direct and proximate cause of these actions, AIIC has been damaged in the amount of \$95,348.99, plus all other direct, actual, consequential and other damages to which it is entitled under applicable law, plus interest.

**PRAYER FOR RELIEF**

WHEREFORE, AIIC respectfully requests the Court enter judgment in its favor and:

1. Award AIIC the sum of \$95,348.99 for DDG's breach of contract and failure to pay premiums owed to AIIC;
2. Award pre- and post-judgment interest to the fullest extent permitted by law; and
3. Award AIIC such other and further relief that the Court deems just and proper.

This 25th day of March, 2021.

/s/ Amanda P. Nitto  
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